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KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT OF
THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah Corporation
sole; and the "MORMON CHURCH" THE
CHURCH OF JESUS CHRIST OF LATTER-
DAY SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO CORPORATION OF
THE PRESIDENT OF THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS' MOTION TO DISMISS
AND/OR FOR SUMMARY JUDGMENT

NOTED FOR: FEBRUARY 9, 2007
9:00 A.M.

THE HONORABLE LAURA INVEEN

I. INTRODUCTION

Defendant Corporation of the President of the Church of Jesus Christ of Latter-day Saints' ("COP") Motion to Dismiss and/or Motion for Summary Judgment is nothing more than an attempt to paint plaintiff and plaintiff's counsel in a false light to this court. As discussed in more detail below, this Court should deny COP's motion for the following reasons: 1) the issues raised herein have already been briefed, considered and addressed by a Judge Thomas Zilly, 2) COP's argument that the Church is not "doing business" in the State of Washington is incorrect; and 3) COP's claim that the Church, "as a practical matter," cannot be sued is disingenuous, as the Church has sued and has been sued no less than 11 times.

PLTF. OPP. TO DEF. MSJ - 1
06-2-18131-0 KNT
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II. STATEMENT OF RELEVANT FACTS

Defendant cites to several other recent cases filed by plaintiff's counsel in an attempt to support its argument that plaintiff's naming of the Church is simply an attempt at forum shopping. However, Defendant conveniently fails to provide the Court with all the relevant procedural facts in those cases. A complete understanding of the procedural facts and relevant timelines in those cases demonstrates that Defendant's allegations of forum shopping are baseless.

Plaintiff filed this lawsuit on June 1, 2006, naming both COP and the Mormon Church. As noted by defendant, Plaintiff's counsel also represents the plaintiff in the matter of *Rinde v. The Corporation of President of the Church of Jesus Christ of Latter-day Saints, et al.* (King Co. Sup. Ct. 06-2-09825-1). The *Rinde* matter was filed on March 22, 2006.

As Defendant is aware, in filing the *Rinde* complaint, plaintiff intended to name both COP and the Mormon Church itself.¹ Despite this knowledge (and despite knowing the inclusion of the Mormon Church would defeat diversity), COP removed the matter to federal court. COP's removal was based on its determination that the plaintiff had named only one defendant – COP – and that complete diversity existed. Plaintiff then filed a Motion to Amend to Clarify Status of Defendants and for Remand. Plaintiff's primary position (communicated to COP prior to the removal)² that the plaintiff had, indeed, named the Mormon Church as a defendant.³ In ruling on the Motion to Amend/Remand, Judge Zilly did

¹ Declaration of Michelle A. Menely at **Exhibit A**.

² At about the time COP appeared in that action, a telephone conversation occurred between plaintiff's counsel, Tim Kosnoff, and defense counsel, Chuck Gordon. During that conversation, defense counsel advised that it was COP's intention to remove the action to federal court. In response, Kosnoff, specifically advised Gordon that the Mormon Church, itself, was a named defendant and that diversity did not exist. *See*, Declaration of Tim Kosnoff, ¶2 (filed in support of Reply to Opposition to Motion to Amend/Remand (U.S.D.C. Dkt No. 9) attached as **Exhibit B** (without attachments) to the Declaration of Michelle A. Menely, filed herewith.

³ A copy of Plaintiff's Motion to Amend/Remand, along with the Reply Brief is attached to the Menely Declaration as **Exhibit B-1**.

not agree that the plaintiff had originally named the Mormon Church, but allowed plaintiff to amend, which amendment necessitated remand to King County.⁴

Approximately five months **after** the briefing on the Motion to Amend/Remand motion was complete in the *Rinde* matter, counsel for the parties to this case began trying another case – *R.K. vs. Corporation of the President of the Church of Jesus Christ of Latter day Saints*.⁵ In the week or two prior to the commencement of the trial, the parties exchanged proposed jury instructions – including the instruction in which COP admitted it "stands in the shoes of the Church."⁶

III. ARGUMENT

A. EVENTS THAT OCCURRED AFTER THE TIME THE MOTION TO AMEND/REMAND IN THE *RINDE* MATTER WAS BRIEFED DO NOT RENDER PLAINTIFF'S ASSERTIONS AS MISREPRESENTATIONS.

While irrelevant to this matter, COP's allegations that plaintiff's counsel "misrepresented" facts in the *Rinde* motion are wholly incorrect and must be corrected in light of COP's apparent intention to use such allegations to unjustly paint the plaintiff in this matter in a bad light. COP supports its offensive assertion by pointing to the language of a jury instruction that was submitted approximately five months **after** the briefing was completed on the Motion to Amend/Remand in the *Rinde* matter. It is beyond dispute that a statement (or admission) made five months after a pleading was filed does not render statements in the original pleading "misrepresentations." In this circumstance, defendant's assertion is disingenuous at best and, at worst, it is an attempt to poison this Court as to the veracity of plaintiff's counsel. Defendant's attempt should be disregarded.

⁴ Menely Decl. at **Exhibit C**. Judge Zilly allowed Plaintiff to amend its Complaint and join the Mormon Church because – among other reasons – "[t]he absence of the Mormon Church as a named defendant could preclude Mr. Rinde from recovering damages for any fault attributable to the Mormon Church." *Id.* at 2:20-22. Despite defendant's allegation of "forum shopping" Judge Zilly declined to "impute an improper motive to Plaintiff." *Id.* at 3:1-2.

⁵ The case was set for trial to commence on October 2, 2006. Menely Decl., ¶4.

⁶ *Id.*

Furthermore, defendant's assertion that it could not "rebut" this alleged falsehood is incorrect. Fed Civ. R. 7(g) provides the parties with an ability to file a sur-reply to strike materials contained in a reply brief. One would presume that defendant would have filed a Motion to Strike if they truly believed that the reply brief contained misrepresentations which swayed Judge Zilly's decision.

B. PLAINTIFF HAS THE RIGHT TO NAME DEFENDANTS AS HE SEES FIT.

Defendant asserts that because plaintiff has named COP in this action, the inclusion of the Mormon Church is futile. However, at least prior to the proposed jury instruction, plaintiff could not know whether COP would defend this claim by asserting that it did not prescribe the policies and practices of the local wards of the Mormon Church or that it is not the entity responsible for the acts or inactions of the Bishops, Stake Presidents, or other officials involved in this case. If so, and if COP successfully defended this action by asserting that agents of the "Mormon Church" – and not COP – were responsible for plaintiff's injuries, plaintiff would be left with an "empty chair" entity. Plaintiff should not be placed in that position.

Furthermore, while COP now admits that "legally it stands in the shoes of the Church" plaintiff is unsure what this means for purposes of this (and other) continuing cases. Does COP now admit, **for all purposes – and for all cases** – that **any** person or entity who would otherwise be an agent of the Mormon Church is an agent of COP? Does COP stipulate that such admission applies to evidentiary issues?⁷ If so, plaintiff offers to dismiss the Mormon Church, itself, from this litigation.⁸ However, in the absence of an **unequivocal** stipulation

⁷ For example, if the Mormon Church were a defendant and if a statement by a member would qualify as an "admission of a party opponent (the Mormon Church)" would COP stipulate that such statement would be an admission for purposes of COP?

⁸ However, in the interest of full disclosure, due, in part, to events which occurred during the *R.K.* trial, and due, in part, to the result in the *R.K.* matter, plaintiff is considering moving to consolidate this case and another matter which is factually intertwined, *K.F. vs. Estate of Allenbach*, King County Cause No. 06-2-18132-8 KNT.

1 regarding the relationship between COP and members of the Mormon Church, plaintiff must
2 be allowed to pursue the litigation strategies of his choice.⁹

3 **C. COP (AND THE MORMON CHURCH) SHOULD BE JUDICIALLY ESTOPPED FROM**
4 **ARGUING THAT THE MORMON CHURCH IS NOT AN ENTITY THAT CAN SUE OR BE**
5 **SUED.**

6 "Judicial estoppel is an equitable doctrine that precludes a party from gaining
7 advantage by asserting one position in a court proceeding and later seeking a second
8 advantage by taking a clearly inconsistent position." *City of Spokane v. Marr*, 129 Wn.App.
9 890, 893, 120 P.3d 652 (2005) citing *Johnson v. Si-Cor, Inc.*, 107 Wn. App. 902, 906, 28 P.3d
10 832 (2001). The doctrine applies "only if a litigant's prior inconsistent position benefited the
11 litigant or was accepted by the court." *Id.* Here, for the reasons discussed below, COP should
12 be judicially estopped from asserting that the Mormon Church is not an entity that can be
13 sued.

14 **(1) SCOTT v. COP – COP IMPLIEDLY ARGUED FOR THE OPPOSITE.**

15 In the case of *Scott v. Corporation of the Presiding Bishop of the Church of Jesus*
16 *Christ of Latter-Day Saints*, U.S.D.C., District of Oregon (Cause No. 98-366AA) the plaintiff
17 named four defendants (1) the Corporation of the Presiding Bishop, (2) **the Mormon**
18 **Church**, (3) the Corporation of the President of the Church of Jesus Christ of Latter-Day
19 saints, and (4) Gregory Lee Foster. All four defendants appeared and answered the
20 Complaint.¹⁰ The defendants in that action – including COP – then brought a motion for
21 determination of diversity. In bringing the motion, COP asserted that it was "concerned" that

22 ⁹ The fact that plaintiff's counsel has, or has not, included the Mormon Church as a defendant in prior actions is
23 not dispositive of whether plaintiff should be permitted to do so in this case. Plaintiff's counsel should not be
24 required to divulge their litigation strategies and theories to defense counsel. However, lest plaintiff be accused
25 of agreeing with defendant's assertion, plaintiff points out that theories and strategies relating to prosecution of
26 clergy sex abuse cases are evolving over time. The *Doe* and *R.K.* matters were filed years ago (in 2002 and
2004, respectively) and plaintiff's counsel's theories and strategies have been evolving during that time frame.
With respect to the *David Ames* case, counsel in this case are not directing the litigation strategies of the New
Jersey counsel.

¹⁰ Menely Decl. at Exhibit D.

inclusion of the Mormon Church destroyed diversity.¹¹ In rendering the decision, the judge in *Scott* agreed that the inclusion of the Mormon Church destroyed diversity and remanded the matter to the Oregon Superior Court. By raising the issue in the manner it did, and by obtaining a remand as a result, COP impliedly argued that the Mormon Church was a properly-named defendant. COP cannot now take the exact opposite position. Its motion to dismiss should be denied for this reason alone.

(2) OTHER REPORTED CASES.

Defendant asserts that because COP exists, the Mormon Church is not an entity that can sue or be sued. In support of this assertion, COP asserts that it is the entity that has employees and possesses assets (and that the Mormon Church, itself, has none).¹² However, reported cases from around the country indicate that the Mormon Church itself: 1) has been involved in litigation, both as a plaintiff and as a defendant; 2) has employees; and 3) possesses assets.

The Mormon Church, itself, is the named **plaintiff** in the following actions:¹³

- *Church of Jesus Christ of Latter-day Saints vs. Jefferson County*, 741 F. Supp. 1522 (N.D. Ala. 1990) (“church which unsuccessfully applied for rezoning to allow development of land for place of worship filed action against county....”);
- *Church of Jesus Christ of Latter-day Saints vs. Jefferson County, Alabama*, 721 F. Supp. 1212 (N.D. Ala. 1989) (“vendors of property and purchaser, a church, brought action challenging denial of zoning change to all construction of worship facility on the property....”);
- *Stotts v. Church of Jesus Christ of Latter-day Saints vs. Lindsey Constr. Co.*, 882 P.2d 1106 (Okla. App. 1984) (in defending claim against it, church defendant instituted a third-party complaint):

¹¹ Menely Decl., Exhibit E, pg. 2:15-17.

¹² *Id.* at 2:5-22.

¹³ Menely Decl. at Exhibit F.

1 It is disingenuous for the COP (on behalf of the Mormon Church) to "pick and
2 choose" – claiming that the Mormon Church is an entity capable of suing – and suing in its
3 own name when it suits the Church's purpose – but then denying that it can be sued when it
4 does not suit the Church's purpose. The mere fact that the Mormon Church has elected to sue
5 in its own name should judicially estop it from arguing that it is not an entity that can be sued.

6 The Mormon Church, itself, was the named defendant in the following cases:¹⁴

- 7 • *Davis v. Church of Jesus Christ of Latter-day Saints*, 852 P.2d 640
8 (Mont. 1993) (defending fraud claim);
- 9 • *Hotaling v. Church of Jesus Christ of Latter-day Saints*, 118 F.3d 1999
10 (4th Cir. 1997) (defending copyright infringement action);
- 11 • *Church of Jesus Christ of Latter-day Saints v. Superior Court of State*
12 *of Arizona*, 714 P.2d 431 (Ariz. App. 1985) (defending claim of parents
13 of child who was killed after being struck by an automobile when he
14 rode his bicycle from church parking lot into city street);
- 15 • *Church of Jesus of Latter-day Saints v. Superior Court of State of*
16 *Arizona*, 764 P.2d 759 (Ariz. App. 1988) (defending claim by mother
17 of victim of child abuse).

18 The reported cases indicate that the Mormon Church, the unincorporated entity, **has**
19 **employees**.¹⁵

- 20 • *Church of Jesus Christ of Latter-day Saints vs. Industrial Commission*
21 *of Arizona*, 724 P.2d 581 (Ariz. App. 1986) (claimant was "injured
22 while **employed** by the Church of Jesus Christ of Latter-Day
23 Saints....") (emphasis added);
- 24 • *Church of Jesus Christ of Latter-day Saints vs. Industrial Comm'n of*
25 *Utah*, 590 P.2d 328 (Utah 1979) (case involved workman's
26 compensation claim by person who was "**employed** by Plaintiff [the
Church]") (emphasis added);

¹⁴ Menely Decl at Exhibit G.

¹⁵ Menely Decl. at Exhibit H.

- *Schmoyer v. Church of Jesus Christ of Latter-day Saints*, 343 S.E.2d 551 (N.C. App. 1986) (plaintiff's-decedent was "**employed as a custodian** at the Church of Jesus Christ of Latter-Day Saints.") (emphasis added.)

Finally, the issue of whether the Mormon Church itself **has assets** was called into question by at least one reported case: *Church of Jesus Christ of Latter-Day Saints v. Scarborough*, 189 F.2d (1951) (plaintiff brought action against the Church to "recover \$7000 which **was on deposit** with the Church....") (emphasis added).¹⁶

Where the Mormon Church has, itself, instituted (and defended) prior actions, it disingenuous, at best, to assert that it not an entity capable of being sued. At a minimum, the very existence of the other cases demonstrates that there is a question of fact on the issue of whether the Church itself can be sued.

D. THE MORMON CHURCH IS AN UNINCORPORATED ASSOCIATION.

The determination of whether the "Mormon Church" is an unincorporated association has already been determined. First, in the *Rinde* matter Judge Zilly, relying on defendant's own admissions, specifically held that the Mormon Church is an unincorporated association with members in all 50 states.¹⁷ Moreover, in *Scott v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints, et. al.*, defendant affirmatively declared that the Mormon Church is an incorporated association, stating "[t]he Church of Jesus Christ of Latter-day Saints **is an unincorporated religious association** with a worldwide membership"¹⁸ In fact, in the *Scott* case, the defendant affirmatively stated "Defendants **would affirmatively represent to this court that the proper defendant herein is the unincorporated association** of the Brentwood Ward of the Portland Oregon State."¹⁹

¹⁶ Menely Decl. at Exhibit I.

¹⁷ Menely Decl., Exhibit C, pg. 2, ll. 1-2.

¹⁸ Menely Decl. at Exhibit J at pg. 3, ll. 4-10; Exhibit K at ¶4.

¹⁹ Exhibit J at footnote 1.

1 Accordingly defendant is now estopped from arguing that the "Church is not an
2 unincorporated association."

3 **E. THE MORMON CHURCH CAN BE SUED AND IT "DOES BUSINESS" WITHIN THE**
4 **STATE OF WASHINGTON.**

5 RCW 4.28.080 provides the process by which a defendant can be served with
6 process. That statute provides, in pertinent part: (1) If the suit be against a[n] **association**
7 doing business within this state, to **any agent**, cashier or secretary thereof.

8 The issue of whether an entity "does business" in Washington generally arises in the
9 context of whether jurisdiction can be obtained over the defendant under the long-arm statute.
10 While the issue in this case is not jurisdiction, that case law provides guidance as to when an
11 entity is "doing business" in this state. Under the long-arm statute, a foreign corporation is
12 subject to jurisdiction of this state if the corporation "transacts business in this state. . ."
13 *Washington Equip. Mfg. Co. v. Concrete Placing Co.*, 85 Wn. App. 240, 246, 931 P.2d 170
14 (1997).²⁰ A foreign corporation "transacts business" in this state if it "purposefully avail[s]
15 itself of the benefits of this state. . . ." *Id.* The determination of whether a corporation
16 "purposefully avails" itself generally turns on whether the corporate entity actually sought
17 Washington business. *Id.* Here, there can be no real question as to whether the Mormon
18 Church meets this test.

19 First, the Mormon Church actively recruits Washington citizens into membership
20 into the Church through its Missionary program.²¹ Second, the members are **required** to pay
21 one-tenth of their gross income to the Church.²² In fact, the Church actually audits the
22

23
24 ²⁰ The *Washington Equip.* case went on to address the other criteria for assertion of jurisdiction over a foreign
25 corporation. The issue here is not whether jurisdiction is properly asserted, it is whether the Mormon Church
26 "does business" within this state. Consequently, analysis of the other factors relating to jurisdiction are not
included herein.

²¹ Menely Decl., Exhibit L at 7-4 and 7-5.

²² Menely Decl., Exhibit L at 9-1.

members to ensure the members are complying with their mandatory tithing requirements.²³ Interestingly, in certain circumstances, the Mormon Church will even accept "marketable real estate" as payment of the requisite tithe.²⁴ The tithing is paid directly to the member's "ward," and the "ward" then deposits those funds into a local checking account and all funds are to be handled through that checking account (prior to transfer to Church headquarters).²⁵

The tithing money is used, among other things, to provide welfare services to needy members within that Ward.²⁶ These welfare services include "food, clothing, shelter, medical assistance, or other life-sustaining aid for the needy."²⁷ Presumably, in order to pay for food for its members, the ward must spend money at a store to purchase that food. The same holds true for clothing, shelter, medical assistance, and other life-sustaining aid for the needy.

The fact that the Mormon Church has assets and does business in the State of Washington is further exemplified by the fact that each ward has financial records and a budget.²⁸ The wards do business in the state, as the ward must "operate on a budget" and ensure that "projected expenses do not exceed anticipated income."²⁹ It makes no sense for the ward to have a budget, if it is not spending money, and thus doing business within the State of Washington.

Where the Mormon Church is requiring all members in the State of Washington to pay it ten percent of its annual gross income, and to pay that money directly to the appropriate ward of the church, it defies logic to state that it is not "doing business" in the State of Washington.

²³ Menely Decl., Exhibit L at 9-1.

²⁴ Menely Decl., Exhibit L at 9-3.

²⁵ Menely Decl., Exhibit L at 9-1, 9-2, 9-3.

²⁶ Menely Decl. at Exhibit L at 9-1.

²⁷ Menely Decl. at Exhibit L at 9-1.

²⁸ Menely Decl. at Exhibit L at 1-2, 1-3, 1-4, 1-5, 9-1, and 9-2.

²⁹ Menely Decl. at Exhibit L at 9-2.

F. THE MORMON CHURCH CAN BE SERVED WITH PROCESS.

Because the Mormon Church "does business" in the State of Washington, Plaintiff can serve the Mormon Church by serving any agent of the Church. See RCW 4.28.080. The Mormon Church has multiple agents within this state – any Bishop or other clergy would suffice. Here, plaintiff served Gordon Conger as agent for the Church. Mr. Conger served as the Seattle Temple President for the Mormon Church from 2001 to 2004.³⁰ The Mormon Church has identified Gordon Conger as its "spokesman" for several prominent sexual abuse cases, including cases brought by the same firm who represents Plaintiff in this case.³¹ Plaintiff has served Conger as "an agent" for the Mormon Church and doing so is sufficient service of process.

G. ARGUMENT IN FRONT OF THE SAME JUDGES

Plaintiff defers to this Court regarding COP's unorthodox proposal that it hear this motion concurrently with the nearly-identical Motion to Dismiss to be heard by the William L. Downing, but is confident that both judges are capable of making individual, independent decisions.

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³⁰ Menely Decl. at Exhibit M.

³¹ Menely Decl. at Exhibit N.

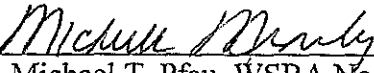
IV. CONCLUSION

For the above stated reasons, plaintiff respectfully requests that this Court DENY
COP's Motion to Dismiss and/or for Summary Judgment.

RESPECTFULLY SUBMITTED this 29th day of January 2007.

GORDON, THOMAS, HONEYWELL,
MALANCA, PETERSON & DAHEIM LLP

By



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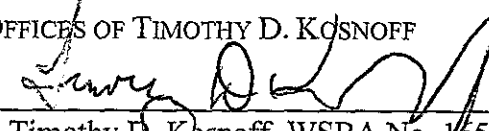
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LAW OFFICES OF TIMOTHY D. KOSNOFF

By



Timothy D. Kosnoff, WSBA No. 16586

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 21 day of January, 2007, I did serve true and correct copies of the foregoing via facsimile and via ABC Legal Messengers by directing delivery to and addressed to the following:

Counsel for COP.:

Charles Gordon, Esq.
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1325 Fourth Avenue, Suite 1800
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Fara Fusaro
Legal Assistant to Michelle A. Menely

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KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

The Honorable Laura C. Inveen

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

SECOND DECLARATION OF PAUL
D. RYTTING IN SUPPORT OF
REPLY BRIEF IN SUPPORT OF
MOTION TO DISMISS AND/OR
MOTION FOR SUMMARY
JUDGMENT

I, Paul D. Rytting, declare as follows:

1. My name is Paul D. Rytting. I am over the age of eighteen, and I make these statements based upon personal knowledge.
2. I have been a member of The Church of Jesus Christ of Latter-day Saints ("the Church") all of my life. I currently function as the Director of the Church's Risk Management Division and have served in similar positions for fifteen years.

1 3. I also serve as the bishop of my ward (congregation) of the Church in the Salt
2
3 Lake area and am familiar with the corporate organization of Corporation of the President of The
4
5 Church of Jesus Christ of Latter-day Saints ("COP"), the organization of the Church, the
6
7 financial operations of local wards, and the polity, policy, and beliefs of the Church.
8

9 4. Missionary work is a deep spiritual obligation of every member of the Church.
10

11 5. The payment of tithing is a spiritual obligation and a privilege. The payment of
12
13 tithing is considered a privilege of membership with associated blessings. Members make an
14
15 annual, personal declaration to their bishop of whether they tithe, but no one's membership is
16
17 revoked for failing to do so. Although the Church will accept certain in-kind donations as
18
19 tithing, it does so exclusively through a corporate entity like COP – the Church as an
20
21 unincorporated association does not take title to real property.
22

23 6. The Church does not own or lease any property used by local missions. COP
24
25 funds the operation of local missions.
26

27 7. The donated funds collected by local wards are deposited in local banks. Within
28
29 24 hours, those accounts are swept into a central account owned by COP.
30

31 8. The checking (disbursement) account used by domestic local wards and stakes is
32
33 owned by Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day
34
35 Saints ("CPB"). Funds in this account are provided by COP from contributed revenue, including
36
37 tithing.
38

39 9. The budget of a local ward is an amount allocated to local units by COP and CPB.
40
41 The local units are aided greatly in tracking and administering budgets by COP and CPB
42
43 employees. The "budget" of a local unit is not connected to the amount of donations received.
44
45

1 10. Fast offerings are used solely for the purpose of providing for the poor and needy.
2
3 Fast offering donations are collected by local wards, but are also deposited in local bank
4
5 accounts that are swept into a central COP account.
6

7 11. Local leaders sign checks on the CPB account to provide for the needy in their
8
9 area. In most instances, the Church does not have to pay for food or other commodities provided
10
11 to the needy inasmuch as CPB and affiliated entities operate their own farms and other facilities
12
13 for welfare purposes. Thus, the Church can simply provide food and other commodities to the
14
15 needy, which may include people of other faiths. Money to pay for needed items not available
16
17 within the system comes from COP, not Church, bank accounts via the CPB disbursement
18
19 account.
20


21 12. Welfare operations and facilities are all owned and operated by CPB and other
22
23 corporate entities, not the Church.
24

25 13. Local wards and stakes and their bishops and stake presidents do not do enter into
26
27 contracts. They do not buy the furniture in their buildings. They do not employ the maintenance
28
29 staff or even pay the light bill. They do not own or maintain the properties.
30

31 I declare under penalty of perjury that the foregoing is true and correct.
32

33 SIGNED at Salt Lake City, Utah, this 5th day of February, 2007.
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45



PAUL D. RYTTING

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KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

The Honorable Laura Inveen

Hearing Date: February 9, 2006 9:00 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

REPLY BRIEF IN SUPPORT OF
MOTION TO DISMISS AND/OR
MOTION FOR SUMMARY
JUDGMENT

I. INTRODUCTION

COP's motion should be granted because Plaintiff concedes the two central bases of the motion.

First, plaintiff concedes the Church is not needed to prove liability or recover damages. Plaintiff asserts he would "dismiss the Mormon Church" if COP stipulates that "any person or

REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS
AND/OR MOTION FOR SUMMARY JUDGMENT - 1

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ORIGINAL

entity who would otherwise be an agent of the Mormon Church is an agent of COP.”¹ COP so stipulates and the Court need go no further—the motion should be granted. When COP states it “stands in the shoes of the Church,” it means that any person who the jury otherwise would find to be an agent of the Church (if the Church were a party) is an agent of COP. There will be no “empty chair,” and COP will not assign “fault” to the Church if the Church is dismissed. Naming the Church as a defendant is no more proper than naming an operating division of a corporation. In each case, the related corporate entity is the proper party to answer for the alleged acts of negligence.

Second, plaintiff fails to discuss, much less rebut, the cases cited by COP that hold that when a religious society incorporates, the spiritual church “endures wholly free from civil law.”² When a religious organization adopts a corporate form, it is only that entity that answers in court for the unincorporated church.

II. ARGUMENT

A. Plaintiff Fails to Rebut the Legal Basis of the Motion.

1. When a Religious Organization Incorporates, the Remaining Spiritual Organization Is Not Subject to Suit.

COP’s central legal argument was not rebutted by plaintiff, and thus it must be deemed conceded. As COP stated in its opening motion, once a religious entity chooses to incorporate, one can bring suit only against the corporate form:

Whenever a religious society incorporates, it assumes a dual existence; two distinct entities come into being—one, the Church, which is conceived and endures wholly free from civil law, and the other, the corporation created through the state prescribed method. . . . The components of the ecclesiastical relationship between the

¹ Pl.’s Memo in Opposition at 4:22.

² *Folwell v. Bernard*, 477 So.2d 1060, 1063 Fl. App. (1985).

1 parent church and the subordinate body cannot be permitted to
2 serve as a bridge capable of reaching the non-secular parent in a
3 civil proceeding.
4

5 *Folwell*, 477 So.2d at 1063. Since plaintiff fails to distinguish or contradict this authority, the
6
7 Court must conclude that the only proper defendant is the church's corporate incarnation, COP.
8
9 COP's motion should be granted.
10

11 **2. COP Accepts Plaintiff's Offer to Dismiss the Church.**
12

13 Plaintiff does not dispute COP's assertion that the Church is not needed by plaintiff to
14
15 prove liability or collect damages. To the contrary, plaintiff concedes that the Church should be
16
17 dismissed—and that he would do it himself—if agents of the Church are deemed agents of COP.
18
19 Pl.'s Opp. at 4:20-21. COP hereby accepts plaintiff's offer. With nothing in dispute, the Court
20
21 should dismiss the Church.
22

23 Setting aside plaintiff's unreasonable suggestion that COP should enter into a stipulation
24
25 "for all cases," the circumstances of which are neither known nor relevant here, COP agrees to
26
27 the following for purposes of this case: (1) anyone who would be an agent of the Church if the
28
29 Church were a party is an agent of COP; (2) any statement that would be an ER 801 party
30
31 admission of the Church if the Church were a party is likewise an admission of COP; and (3) the
32
33 Church is not an entity to whom fault can be attributed under RCW 4.22.070. Hence, COP has
34
35 provided the assurances plaintiff has requested, and the Court should adopt plaintiff's suggestion
36
37 to dismiss the Church from the litigation.
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3. Judge Zilly's Ruling is Not Binding

Plaintiff states that Judge Zilly ruled on this issue in the *Rinde* case. That ruling is not binding in this case, and plaintiff does not suggest otherwise.

Substantively, as COP previously discussed, Judge Zilly's decision to permit Mr. Rinde to add the Church as a defendant was borne of a misconception. That misconception has been erased—the undisputed fact is that no “empty chair” results from dismissal of the Church. Whether the briefing to Judge Zilly was intentionally misleading or not is not the point, and COP did not intend to paint counsel in a negative light. The important thing is that counsel's suggestion of the empty chair risk came on reply brief, it was wrong, and Judge Zilly relied on it.

B. Judicial Estoppel Does Not Apply.

COP candidly concedes that the Church's attention to corporate formalities has not always been as rigorous and consistent as it has become in the last decade. The Church has participated in litigation in its own name. The question for this Court is thus whether the legally correct ruling should be sacrificed because of an artifact of Church history? Legally and equitably, the answer must be no.

Plaintiff's reliance on judicial estoppel is misplaced. Division I of the Court of Appeals, quoting the United States Supreme Court, has stated that judicial estoppel “prevent[s] ‘perversion of the judicial process’ by not allowing parties to ‘gain an advantage by litigation on one theory, and then seek[ing] an inconsistent advantage by pursuing an incompatible theory.’” *Falkner v. Foshaug*, 108 Wn. App. 113, 124, 29 P. 3d 771 (2001) quoting *New Hampshire v. Main*, 532 U.S. 742, 750 121 S. Ct. 1808, 149 L. Ed.2d 968 (2001). Judicial estoppel is applied in the discretion of the court. *Id.*

As a threshold matter, judicial estoppel should not apply because the alleged inconsistency relates to a question of law—capacity to sue and be sued—not fact. However, “the heart of the doctrine is the prevention of inconsistent positions as to facts. It does not require counsel to be consistent on points of law.” *King v. Clodfelder*, 10 Wn. App. 514, 521 (1974). *Accord, Holst v. Fireside Realty Inc.*, 89 Wn. App. 245, 259, 948 P.2d 858 (1997) (the “doctrine prevents a party from taking a factual position that is inconsistent with his or her factual position in previous litigation.”)

Both the United States Supreme Court and the courts of this state have cited factors to guide the Court in exercising its discretion, and “these factors are not exclusive and ‘additional considerations may inform the doctrine’s application in specific factual contexts.’” *Falkner*, 108 Wn. App. at 124-25, quoting *New Hampshire v. Maine*, 532 U.S. at 751. The Court of Appeals in *Falkner* identified the following factors:

[T]he following have been enumerated as essentials to the establishment of an estoppel under the rule that a position taken in an earlier action estops the one taking such position from assuming an inconsistent position in a later action: (1) the inconsistent position first asserted must have been successfully maintained; (2) a judgment must have been rendered; (3) the positions must be clearly inconsistent; (4) the parties and questions must be the same; (5) the party claiming estoppel but have been misled and have changed his position; (6) it must appear unjust to one party to permit the other to change.

Falkner, 108 Wn. App. at n.36.³ These factors are not present here:

- Not successfully maintained: There is no evidence that the Church actually *advocated* a contrary position, or that a court adopted it. The alleged

³ The *Falkner* court noted that the Supreme Court in *New Hampshire v. Maine* identified a similar set of factors: “(1) clear inconsistency between the party’s earlier and later positions, (2) the party’s success in convincing the court to accept its position in the earlier litigations; and (3) an unfair detriment to the opposing party from allowing assertion of the inconsistent positions.” *Falkner*, 108 Wn. App. at 125.

inconsistency arises solely by virtue of the Church's silence (in those cases in which it was sued) and by implication (in those few cases in which is brought suit).

- Not clearly inconsistent: As discussed above, the Church's position was not inconsistent on a point of fact.
- Not same parties: Here, the parties are different.
- Plaintiff not misled: Plaintiff does not contend the Church's alleged inconsistency caused him to be misled in any way or to change his position.
- No injustice: Dismissing the Church cause no injustice to plaintiff, as it affects neither plaintiff's liability nor damages case. To the contrary, it would be unjust to require the Church to answer in all future suits simply because it did not always adhere strictly to corporate formalities.

In sum, whichever half of the equation one examines—the Church's actions or the effect upon the plaintiff—judicial estoppel is not supported. The Church did not persuade a court in the earlier actions to accept its right to sue or be sued, which in any event is a legal question. And, plaintiff asserts no reliance or prejudice. Plaintiff cites judicial estoppel in an effort to lock the Church into a position which plaintiff impliedly concedes is not supported by law. This is not a just result, it is not supported by the law, and it should not be endorsed by this Court.⁴

⁴ Plaintiff's judicial estoppel argument focuses particular attention on *Scott v. Corporation of the Presiding Bishop of the Church of Latter Day Saints*, et. al. (D. Ore. Civ. No. 98-366). In that case, the complaint named the Church, not COP, as a corporation sole, which the Church denied. The Church then filed a motion "for determination of diversity jurisdiction," advising the court that it had no desire to return to state court but if the Court viewed the Church as an unincorporated association, and that entity was a defendant, then the traditional rule would defeat diversity. The Church defendants did not concede that the unincorporated Church was a proper defendant with COP -- the issue was not addressed at all -- and thus there is no inconsistency between COP's position here and in *Scott*.

C. Compliance with the Beliefs of the Church is Not “Doing Business.”

In the alternative, COP moved to dismiss because service was improper and no service could be made on a Church agent because the Church is not doing business in Washington. Relying on their own interpretation of Church doctrines and religious practices concerning tithing/almsgiving and missions (evangelizing), plaintiff asserts there can be “no question” as to whether the Church does business. COP agrees there is no question on this topic, but draws the opposite conclusion.

1. The Court Must Accept the Church’s Interpretation of Its Own Doctrine and Practices.

To the extent this issue turns on the characterization of Church doctrine and practices, this Court must accept the Church’s interpretation over plaintiff’s caricatures.⁵ Basic First Amendment law holds that churches are the definitive interpreters of their own religious doctrines, teachings, polities, and practices.⁶ Absent a sham, no litigant or civil court has the right to second-guess a church in the interpretation of its own religion.

⁵ Plaintiff’s self-serving portrayals betray a fundamental misunderstanding of Church doctrine and practices and highlight the dangers of allowing an adverse litigant to characterize a church’s religious practices. The distortions will be more fully examined below.

⁶ Since *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), the United States Supreme Court has repeatedly held that “civil courts exercise no jurisdiction” over “a matter which concerns theological controversy.” *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713-14 (1976) (quoting *Watson*, 80 U.S. (13 Wall.) at 733-34). Civil courts can never “engage in the forbidden process of interpreting and weighing church doctrine.” *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 451 (1969).

2. **Tithing and Missionary Work are Religious Practices, Not “Doing Business.”**

The religious practices plaintiff calls “business” are actually central to the spiritual life of the Church.⁷ As such, the Church’s practices of tithing and evangelizing no more constitute “doing business” in Washington than the Catholic Church’s practice of communion. Second Declaration of Paul Rytting, ¶¶ 4-5. These core religious practices are simply not “business” under Washington law – they are fundamentally religious, not commercial. If the Church were operating a grocery store as a mechanism to raise funds, that would be doing business. The practices cited by plaintiff are not commercial in nature, and thus cannot be characterized as “doing business.”

Plaintiff argues that the Church’s missionary effort in the State of Washington indicates that it is doing business. That simply is not the case. The Church’s missionary effort is a core spiritual function. Rytting Declaration, ¶ 4. Moreover, the Church is not doing business in the mission. It does not own any of the property used by the mission or enter contracts in connection with the mission. *Id.* ¶ 6. The spiritual work of the mission would not be possible without supporting “business” functions (e.g., checking accounts), but these are controlled and owned by corporate entities. In fact, the funds used to operate the mission are drawn on accounts owned by COP. *Id.*

⁷ The ancient religious practices of tithing/almsgiving and evangelizing are expressly enjoined by scriptural texts (see Malachi 3:8-12; Mark 16:15-16), which under Church doctrine remain binding on current Church members.

Similarly, the payment of tithing is a core spiritual function,⁸ but the “business” of facilitating the donation is done by COP, not the Church. *Id.* ¶¶ 5, 7-11. While it is true that the funds are collected by local wards and deposited in local banks, those accounts are swept within 24 hours and the funds deposited in a central account owned by COP. *Id.* ¶ 7. The checking account used by the local wards and stakes is funded by COP but owned by a second Church corporation, The Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints (“CPB”). *Id.* ¶ 8. The local ward budget is an amount allocated to local units by COP and CPB. *Id.* ¶ 9. The local units are aided greatly in tracking funds and administering budgets by paid COP and CPB employees. *Id.*

Plaintiffs incorrectly indicate that tithing is used to provide welfare services to needy members. In reality, another donation known as fast offerings is used for that purpose. *Id.* ¶ 10. Again, those local donations are swept into a central COP account. *Id.* In most instances, the Church does not have to buy food or other commodities provided to the needy, contrary to Plaintiff’s contentions, inasmuch as Church-affiliated corporations operate their own farms and other facilities for welfare purposes. *Id.* Those welfare operations are all owned and operated by corporate entities not the Church. *Id.* ¶ 12. Any need to purchase items to provide for the needy, are again, drawn on COP accounts. *Id.* ¶ 11.

⁸ For example, contrary to plaintiff’s assertion, Church members are not “required” to tithe their earnings and there is no “audit” to “ensure compliance with their mandatory tithing requirement.” Pl.’s Opp. at 10. This picture of coercion entirely distorts the meaning and place of tithing within the Church’s spiritual life. The payment of tithing is considered a privilege of membership with associated blessings. Members do indeed make a personal declaration to their bishop of whether they tithe, but no one’s membership is revoked for failing to do so. And while the Church will accept certain in-kind donations, it does so exclusively through a corporate entity like COP – the Church as an unincorporated association does not take title to real property. Plaintiff may have a copy of the Church’s ecclesiastical canons, but they have no idea how they actually apply in a Church congregation. .

1 Finally, local wards and stakes and, respectively, their bishops and stake presidents, do
2 not do business. They do enter into contracts. *Id.* ¶13. They do not buy the furniture in their
3 buildings. They do not employ the maintenance staff or even pay the light bill. They do not own
4 or maintain the properties. These functions are performed through COP or other corporate
5 entities and their authorized agents.
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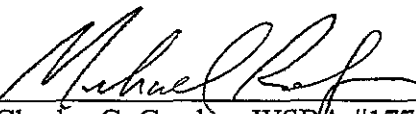
10 In sum, Plaintiff's contention that the Church is doing business is grossly inaccurate.
11 This Court should conclude that the Church is not doing business in the State of Washington and,
12 therefore, service cannot be had on any Church agent.
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17 III. CONCLUSION

18 For the reasons stated above and in COP's opening memorandum, COP respectfully
19 requests that this Court dismiss the Church from this suit.
20
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22

23 DATED this 5th day of February, 2007.
24

25 **GORDON MURRAY TILDEN LLP**

26
27 By 
28 Charles C. Gordon, WSBA #1773
29 Jeffrey I. Tilden, WSBA #12219
30 Michael Rosenberger, WSBA #17730
31 Attorneys for Defendant
32 Corporation of the President of the Church
33 of Jesus Christ of Latter-Day Saints
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FILED

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KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

The Honorable Paris K. Kallas

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

NO. 06-2-18131-0 KNT

CERTIFICATE OF SERVICE

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

The undersigned hereby certifies that on February 5, 2007, copies of the following
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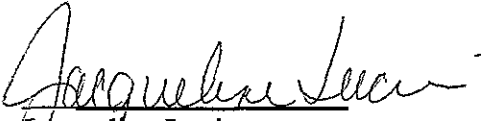
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14 Seattle, WA 98101
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17 ☐ Fax ☐ Federal Express
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19
20 DATED this 5th day of February, 2007.
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KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

The Honorable Paris K. Kallas

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

CERTIFICATE OF SERVICE

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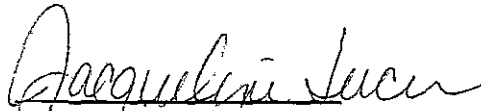
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19

20 DATED this 7th day of February, 2007.
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FILED
07 FEB - 7 PM 4:43
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

The Honorable Laura Inveen
Hearing Date: February 9, 2006 9:00 a.m.

The Honorable Laura C. Inveen

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

PRAECIPE TO DEFENDANT'S
REPLY BRIEF

Defendant's Reply Brief in Support of Motion to Dismiss and/or Motion for Summary

Judgment omitted a word, "not," on page 10, line 3. The corrected sentence should read as
follows: "They do not enter into contracts."

///

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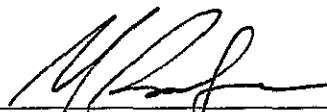
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PRAECIPE TO DEFENDANT'S REPLY BRIEF - 1

ORIGINAL

1 DATED this 7th day of February, 2007.
2
3

4 **GORDON MURRAY TILDEN LLP**
5

6
7 By 
8 Charles C. Gordon, WSBA #1773
9 Jeffrey I. Tilden, WSBA #12219
10 Michael Rosenberger, WSBA #17730
11 Attorneys for Defendants
12 The Corporation of the President of the Church
13 of Jesus Christ of Latter-Day Saints
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KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 06-2-18131-0 KNT

CLERK'S MINUTES

SCOMIS CODE: SMJHRG

Judge: Laura Inveen
Bailiff: Greg Howard
Clerk: Kim Phipps
Reporter: Not Reported

Dept. 48
Date: 2/9/2007

Page 1 of 1

KING COUNTY CAUSE NO.: 06-2-18131-0 KNT

**DF vs. The corporation of the president of the church of Jesus Christ of
Latter Day Saints**

Appearances:

Plaintiff appearing through counsel Tim Kosnoff

Defendant appearing through counsel Michael Rosenberger, Jeff Tilling

MINUTE ENTRY

Defendant's motion to dismiss and/or for Summary Judgment

The court hears oral argument and Denies the motion

Order is signed

FILED
07 FEB -9 AM 10:02
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT OF
THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah Corporation
sole; and the "MORMON CHURCH" THE
CHURCH OF JESUS CHRIST OF LATTER-
DAY SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

~~PROPOSED~~ ORDER DENYING
DEFENDANT CORPORATION OF THE
PRESIDENT OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS' MOTION TO DISMISS
AND/OR FOR SUMMARY JUDGMENT

NOTED FOR: FEBRUARY 9, 2007
9:00 A.M.

THE HONORABLE LAURA INVEEN

THIS MATTER having come on for hearing on defendant's Motion to Dismiss and/or
for Summary Judgment and the Court having considered the following:

1. Defendant COP's Motion to Dismiss and/or for Summary Judgment, including the Declarations of Michael Rosenberger and Paul Rytting, and all attachments thereto;
2. Plaintiff's Memorandum in Opposition, including the Declaration of Michelle A. Menely, and all attachments thereto;
3. COP's Reply Brief and any declarations submitted in reply.

And having heard argument of counsel **ORDERS** that defendant's Motion to Dismiss
and/or for Summary Judgment is **DENIED**.

(PROPOSED) ORDER DENYING DEF. MSJ - 1
06-2-18131-0 KNT
[175211 v01.doc]

LAW OFFICES
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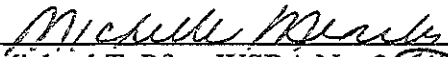
DONE IN OPEN COURT this 9 day of ^{February}~~January~~, 2007.



THE HONORABLE LAURA INVEEN

PRESENTED BY:

GORDON, THOMAS, HONEYWELL,
MALANCA, PETERSON & DAHEIM LLP

By 
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mpfau@gth-law.com
Michelle A. Menely, WSBA No. 28353
mmenely@gth-law.com
Attorneys for Plaintiff

LAW OFFICES OF TIMOTHY KOSNOFF

By _____
Timothy D. Kosnoff, WSBA No.

(PROPOSED) ORDER DENYING DEF. MSJ - 2
06-2-18131-0 KNT
[175211 v01.doc]

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07 FEB 15 PM 2:11

KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

The Honorable Paris K. Kallas

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

NO. 06-2-18131-0 KNT

CERTIFICATE OF SERVICE

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

The undersigned hereby certifies that on February 15, 2007, copies of the following
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17 ☐ Fax ☐ Federal Express
18

19
20 DATED this 15th day of February, 2007.
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FILED

07 FEB 15 PM 2: 12

KING COUNTY
SUPERIOR COURT CLERK
KENT, WAIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

D.F.,

PLAINTIFF,

v.

CORPORATION OF THE PRESIDENT OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY SAINTS,

DEFENDANT.

CASE NO. 06-2-18131-0 KNT
NOTICE FOR HEARING
KENT REGIONAL JUSTICE CENTER ONLY
(Clerk's Action Required) (NTHG)

TO: THE CLERK OF THE COURT and to all other parties per list on Page 2:
PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to
note this issue on the calendar checked below.

Calendar Date: February 23, 2007

Day of Week: Friday

Nature of Motion: MOTION FOR RECONSIDERATION

CASES ASSIGNED TO INDIVIDUAL JUDGES – RJC

Working Papers: The judge's name, date and time of hearing must be noted in the upper right corner of the Judge's copy.
Deliver Judge's copies to Judges' Mailroom at RJC

☒ Without oral argument (Mon - Fri)☐ With oral argument Hearing Date/Time: _____

If oral argument on the motion is allowed (LR 7(b)(2)), contact staff of assigned judge to schedule date and time before
filing this notice.

Judge's Name: LAURA INVEEN

Trial Date: November 19, 2007

CHIEF CIVIL DEPARTMENT – RJC

All Chief Civil calendars are at 10:00 on Fridays, except as noted. See signs posted at RJC for calendar location.
Deliver working copies to Judges' Mailroom, Room 2D at RJC. In upper right corner of papers write "Chief Civil Department"
and date of hearing.

☐ Extraordinary Writs (Show Cause Hearing) (LR 98.40)☐ Supplemental Proceedings (9:15 am) (LR 69)☐ Motions to Consolidate with multiple judges assigned (LR 40(a)(4)) (without oral argument) M-F

Non-Assigned Cases:

☐ Dispositive Motions and Revisions (10:30 am)☐ Non-Dispositive Motions M-F (without oral argument)☐ Certificates of Rehabilitation- Weapon Possession (Convictions from Limited Jurisdiction Courts)(LR 40(2)(B))☐ Certificates of Rehabilitation (Employment)

PARTIES: The address of the Regional Justice Center is 401 4th Avenue North, Kent, WA 98032. You must bring this
document and appear as scheduled.

☐ Room:☐ See Posted Signs

You may list an address that is not your residential address where you agree to accept legal documents.

Sign: 

WSBA#: 17730

Print/Type Name: Michael Rosenberger

Attorney for: Defendant

Address: 1001 Fourth Avenue, Suite 4000, Seattle, WA 98154-1007

Telephone: (206) 476-6477

Date: February 15, 2007

DO NOT USE THIS FORM FOR FAMILY LAW, EX PARTE OR RALJ MOTIONS.

ORIGINAL

LIST NAMES AND SERVICE ADDRESSES FOR ALL NECESSARY PARTIES REQUIRING NOTICE

Name: Michael T. Pfau
 Address: Michelle A. Menely
 Gordon, Thomas, Honeywell, Malanca,
 Peterson & Daheim LLP
 600 University, Suite 2100
 Seattle, WA 98101-4185

Name: Timothy D. Kosnoff
 Address: Law Offices of Timothy D. Kosnoff
 One Union Square
 600 University Street, Suite 2101
 Seattle, WA 98101

WSBA#: 24649 Attorney For: Plaintiff
 Telephone#: (206) 676-7500

24649 Attorney Plaintiff 24649
 For:
 Telephone#: (206) 676-7610

Name:
 Address:

Name:
 Address:

WSBA#: Attorney For:
 Telephone#:

WSBA#: Attorney For:
 Telephone#:

Name:
 Address:

Name:
 Address:

WSBA#: Attorney For:
 Telephone#:

WSBA#: Attorney For:
 Telephone#:

IMPORTANT NOTICE REGARDING CASES

Party requesting hearing must file motion & affidavits separately along with this notice. List names, addresses and telephone numbers of all parties requiring notice (including GAL) on this page. Serve a copy of this notice, with motion documents, on all parties.

The original must be filed at the Clerk's Office not less than six court days prior to requested hearing date, except for Summary Judgment Motions (to be filed with Clerk 28 days in advance).

THIS IS ONLY A PARTIAL SUMMARY OF THE LOCAL RULES AND ALL PARTIES ARE ADVISED TO CONSULT WITH AN ATTORNEY.

The REGIONAL JUSTICE CENTER is in Kent, Washington at 401 Fourth Avenue North. The Clerk's Office is on the second floor, Room 2C. The Judges' Mailroom is Room 2D.

FILED

07 FEB 15 PM 2:11

KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

The Honorable Laura C. Inveen

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

DEFENDANT COP'S MOTION FOR
RECONSIDERATION

I. INTRODUCTION

On February 9, 2007, this Court denied Defendant COP's Motion to Dismiss the unincorporated Church from this action. In its oral remarks, the Court indicated that it believed a fact question existed as to whether the Church was "doing business" in the state of Washington. Whether the Church is doing business determines whether plaintiff has properly served the Church. If the Church is not doing business, plaintiff's service of a Church agent is not proper under RCW 4.28.080(10) and the Church's motion to dismiss should be granted.

DEFENDANTS' MOTION FOR RECONSIDERATION - 1

GORDON MURRAY TILDEN LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

COP respectfully requests that this Court vacate its order, and grant COP's motion, because: (1) despite plaintiff's *argument* that the Church does business in the State of Washington, there is no *evidence in the record* to support this contention; and (2) whether service has been effected is a jurisdictional question that must be resolved as a matter of law by the Court, not the jury. To the extent that the Court believes a fact question exists as to the propriety of service, it should vacate its order denying the motion and resolve the issue itself after an evidentiary hearing.

II. EVIDENCE RELIED UPON

The Declaration of Paul D. Rytting, and Second Declaration of Paul D. Rytting, both previous filed with the motion under reconsideration.

III. ARGUMENT

A. Plaintiff Presented No Facts from which the Court Could Conclude a Fact Question Existed.

Clearly, the parties disagree regarding whether the Church does business in this state. However, plaintiff presented *no factual evidence* to support his position, and thus there is no basis from which the Court could conclude that a fact question exists.

If the Court reviews the evidence submitted by plaintiff in opposition to COP's motion, the Court will look in vain for *any* indicia that the Church is doing business in this state. Plaintiff presented none of the following: (a) pay stubs indicating that the Church employs persons in this state; (b) real property records indicating that the Church owns property in this state; (c) contracts to which the Church is a party; or (d) bank accounts in the name of the Church.

1 **1. Cases from Other Jurisdictions Say Nothing about Church Dealings in**
 2 **Washington.**

3
 4 Plaintiff's claim that the Church is doing business rests on three propositions. First,
 5
 6 plaintiff argues the Church must be "doing business" in Washington because it has been
 7
 8 characterized in other lawsuits as having engaged in a property transaction or having employees.
 9
 10 As discussed in prior briefing and oral argument, this is not true—these cases reflect nothing
 11
 12 more than inattention by the parties to those cases to the fact that the real party in interest was
 13
 14 COP.¹

15
 16 Significantly, however, even if one gives plaintiff the benefit of the doubt and assumes
 17
 18 for purposes of the motion that in the past the Church had employees or did business in another
 19
 20 state, this says nothing about whether the Church currently does business in *this* state. If we
 21
 22 were discussing a corporation, the fact that it did business in Florida in 1995 would not prove it
 23
 24 currently does business in Washington.

25
 26 **2. The Only Factual Evidence Cited by Plaintiff Says Nothing About Whether**
 27 **COP or the Church Controls the Assets.**

28
 29 Second, plaintiff opposed the motion by asserting that money collected and spent by local
 30
 31 congregations (known as "wards") constitutes "doing business." COP urges the Court to
 32
 33 scrutinize the authority cited by plaintiff because the facts he cited do not support his contention.
 34

35 For example, plaintiff alleged that "the fact that the Mormon Church has assets and does
 36
 37 business in the State of Washington is further exemplified by the fact that each ward has
 38
 39 financial records and budget." Pl's Memo in Opp. at 10. Plaintiff based this contention on the
 40
 41 Church's Handbook of Instructions, which states only that "every stake and ward should prepare
 42

43
 44 ¹ For example, one can readily imagine that an employee of COP with a worker's compensation claim might refer to
 45 his employer as "the Church," just as a person employed at the University of Washington might identify her
 employer as the University, even though technically her employer is the State of Washington.

and operate on a budget.” Declaration of Michelle Menely, Ex. L at 9-2. Significantly, the Handbook of Instructions does *not* identify the source of such funds or the corporate entity that owns and controls such funds. Those facts are provided only in the Second Declaration of Paul Rytting:

The checking (disbursement) account used by domestic local wards and stakes is owned by the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints (“CPB”). Funds in this account are provided by COP from contributed revenue, including tithing.

Second Declaration of Paul D. Rytting ¶ 8. Plaintiff presents absolutely no contrary evidence.

Corporate control of the financial affairs of the Church is so complete that local wards do not even pay the electric bills for the facilities in which Church members worship:

Local wards and stakes and their bishops and stake presidents do not enter into contracts. They do not buy the furniture in their buildings. They do not employ the maintenance staff or even pay the light bill. They do not own or maintain the properties.

Id. at ¶ 13.

3. Tithing and Missionary Work Are Spiritual, not Commercial, Practices.

Third, plaintiff argued that tithing and missionary work constitutes “doing business.” Mr. Rytting’s Second Declaration removes any doubt as to the role of tithing and missionary work in the Church—these are religious practices, not commercial ones. Plaintiff’s argument to the contrary is just that, argument. There is no contrary *evidence* and, in any case, the Church’s interpretation of its own doctrine is dispositive. *Presbyterian Church v. Mary Elizabeth Hull Mem’l Presbyterian Church*, 393 U.S. 440, 451 (1969) (courts cannot “engage in the forbidden process of interpreting and weighing church doctrine).

1 In sum, plaintiff presented no facts from which this Court could conclude the Church
 2 does business in this state.
 3

4
 5 **B. Even if this Court Found a Fact Question as to Whether Service had been Property**
 6 **Accomplished, it is this Court's Duty to Resolve that Issue, not the Jury's.**
 7

8 **1. Service of Process is a Jurisdictional Issue.**
 9

10 "First and basic to any litigation is jurisdiction, and first and basic to jurisdiction is
 11 service of process." *State v. Breazeale*, 144 Wn.2d 829, 842, 31 P.2d 1155 (2001), quoting
 12 *Dobbins v. Mendoza*, 88 Wn. App. 862, 871, 947 P.2d 1229 (1997). "Proper service of the
 13 summons and complaint is essential to invoke person jurisdiction over a party." *In Re Marriage*
 14 *of Markowski*, 50 Wn. App. 633, 635-36, 749 P.2d 754 (1988).
 15
 16
 17
 18

19
 20 **2. Jurisdiction is a Question of Law for this Court, Not the Jury.**
 21

22 "Jurisdiction is a question of law." *City of Spokane v. Spokane County*, 158 Wn.2d 661,
 23 681, 146 P.3d 893 (2006); *see also, Rodriguez v. James-Jackson*, 127 Wn. App. 139, 144, 111
 24 P.3d 271 (2005) ("Whether a plaintiff has satisfied the requirements for service by publication
 25 under RCW 4.28.100 is a question of law.")
 26
 27
 28

29
 30 **3. If a Fact Question Exists as to Whether the Church Has Been Served, the**
 31 **Court Should Resolve the Motion After an Evidentiary Hearing.**
 32

33 For the reasons stated above, COP strenuously urges that no fact question exists as to
 34 whether it does business in this state. If so, the Church cannot be served through an agent,
 35 service has not been effected, and the motion to dismiss should be granted.
 36
 37

38 To the extent the Court continues to believe a fact question exists as to the Church's
 39 alleged business dealings, it is the Court's duty to resolve the issue after an evidentiary hearing.
 40
 41 This process has been approved by the Court of Appeals:
 42
 43
 44
 45

1 We remanded for an evidentiary hearing to determine whether Mr.
2 Spence was served with process and, thus, whether the court had
3 personal jurisdiction over him. After considering conflicting
4 evidence, the trial court determined the summons and complaint
5 were left by a process server with a person of suitable age and
6 discretion at Mr. Spence's residence
7

8 *Woodruff v. Spence*, 88 Wn. App. 565, 566, 45 P.2d 745 (1997).
9

10 **C. Judge Downing Granted COP's Motion.**
11

12 As the Court is aware, the parties had an identical motion in a similar case pending before
13 Judge Downing. *Rinde v. Corporation of the President, et al.*, Cause No. 06-2-09825-1 SEA.
14 Although his ruling is not binding upon this Court, the Court may be interested to know that
15 Judge Downing granted COP's motion, subject generally to the conditions that COP agrees that
16 Church agents are COP agents and that COP not remove the case to federal court until the Court
17 rules on a motion to amend the complaint to add a Washington resident (COP will oppose it but,
18 if granted, it would destroy diversity).
19

20 The form of order submitted by the parties for Judge Downing's approval is attached
21 hereto. As of the date the instant motion was filed, undersigned counsel had not yet received a
22 signed copy.
23

24 **IV. CONCLUSION**
25

26 For the reasons stated above, COP respectfully requests that this Court vacate its order
27 and grant COP's motion to dismiss the Church. The record presented to this Court includes no
28 facts from which the Court could conclude that the Church was doing business in the State of
29 Washington, and thus service of process was improper. Alternatively, in the event that the Court
30 continues to believe a fact question exists, the order should be vacated pending an evidentiary
31 hearing to determine whether the Church is doing business in the State of Washington.
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DEFENDANTS' MOTION FOR RECONSIDERATION - 6

GORDON MURRAY TILDEN LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

1 DATED this 15th day of February, 2007.
2
3

4 **GORDON MURRAY TILDEN LLP**
5
6

7 By 
8

9 Charles C. Gordon, WSBA #1773

10 Jeffrey I. Tilden, WSBA #12219

11 Michael Rosenberger, WSBA #17730

12 Attorneys for Defendants

13 The Corporation of the President of the Church
14 of Jesus Christ of Latter-Day Saints
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Chvor

GORDON MURRAY TILDEN LLP

ATTORNEYS AT LAW

1001 FOURTH AVENUE, SUITE 4000 · SEATTLE, WASHINGTON 98154-1007

TELEPHONE: (206) 467-6477 · FACSIMILE: (206) 467-6292

EMAIL: MROSENBERGER@GMTLAW.COM

February 12, 2007

Sent via Hand Delivery

The Honorable William L. Downing
King County Superior Court
516 Third Ave.
Seattle, WA 98104

**Re: *Rob Rinde v. Corporation of the President of the Church of Jesus
Christ of Latter-day Saints***
King County Superior Court Cause No. 06-2-09825-1 SEA

Dear Judge Downing:

Enclosed please find a proposed form of order which embodies your oral remarks in granting COP's motion to dismiss last Friday. The order is acceptable to counsel for all parties. If it is acceptable to you as well, please sign it and return conformed copies to counsel. We have enclosed self-addressed stamped envelopes for that purpose.

Thank you for your attention to this matter.

Sincerely,



Michael Rosenberger

MR:jl

Enclosure

cc: (w/enclosure)

Michael T. Pfau (via facsimile)

Timothy D. Kosnoff (via facsimile)

The Honorable William L. Downing

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

ROB RINDE f/k/a ROBERT LARRY LEROY
PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; and the "MORMON CHURCH" THE
CHURCH OF JESUS CHRIST OF LATTER-
DAY SAINTS, an unincorporated association,

Defendants.

NO. 06-2-09825-1 SEA

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS AND/OR FOR SUMMARY
JUDGMENT

THIS MATTER was brought before the Court upon the motion of defendant Corporation of the President of the Church of Jesus Christ of Latter-Day Saints ("COP") to dismiss and/or for summary judgment seeking dismissal of defendant The Church of Jesus Christ of Latter-day Saints ("the Church"). The Court heard the arguments of counsel on February 9, 2007, and has considered the following submissions:

1. COP's Motion to Dismiss;

ORDER - 1

GORDON MURRAY TILDEN LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

2. Declaration of Michael Rosenberger and attached exhibits;
3. Declaration of Paul Rytting;
4. Plaintiff's Opposition Brief;
5. COP's Reply Brief;
6. Plaintiff's Memorandum in Opposition;
7. Declaration of Michelle A. Menely;
8. Reply Brief in Support of Motion to Dismiss; and
9. Second Declaration of Paul Rytting.

Based upon the foregoing, it is hereby:

ORDERED that the motion is GRANTED, subject to the following provisos.

First, to allow plaintiff the opportunity to move to amend the complaint to name Gordon Conger as a party defendant, the case shall not be removed to federal court until after the Motion to Amend is filed and ruled upon; provided, however, the defendant shall have the right to remove if no ruling is issued on or before March 19, 2007. Plaintiff shall file the Motion to Amend no later than 14 days after the date of the hearing, e.g., by no later than February 23, 2007 and plaintiff shall note the motion for hearing, without oral argument, for six (6) court days after filing, and in no event later than March 5, 2007.

Second, in granting the motion, the Court specifically notes and rules as follows:

1. The Mormon Church, itself, is dismissed as a defendant. However, any person who would otherwise be an agent of the Church is an agent of COP.
2. The Court will be liberal in considering statements and admission by agents of the Church as statements and admissions against COP;

ORDER - 2

GORDON MURRAY TILDEN LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

1 3. Any agent of the Church is an agent of COP for both liability and evidentiary
2 purposes.
3

4 4. The Mormon Church will not be an "empty chair" entity in this case.
5
6

7 DATED this _____ day of _____, 2007.
8
9

10
11 The Honorable William L. Downing
12

13 Presented By:

14 GORDON MURRAY TILDEN
15

16
17
18 By Michael Rosenberg

19 Michael Rosenberg, WSBA No. 17730
20 Attorneys for Defendant
21

22
23 Approved as to form:

24 GORDON, THOMAS, HONEYWELL,
25 MALANCA, PETERSON & DAHEIM LLP
26

27
28 By Michael T. Pfau

29 Michael T. Pfau, WSBA No. 24649
30 Michelle A. Menely, WSBA No. 28353
31 Co-Counsel for Plaintiff
32

33 LAW OFFICES OF TIMOTHY D. KOSNOFF
34

35
36 By Michelle Menely

37 Timothy D. Kosnoff, WSBA No. 16586
38 Co-Counsel for Plaintiff
39
40
41
42
43
44
45

ORDER - 3

GORDON MURRAY TILDEN LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

The Honorable Laura C. Inveen

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

[PROPOSED]
ORDER GRANTING COP'S MOTION
FOR RECONSIDERATION AND
DISMISSING THE MORMON
CHURCH

THIS MATTER was brought before the Court upon the motion of defendant Corporation of the President of the Church of Jesus Christ of Latter-Day Saints ("COP") for reconsideration of this Court's order denying COP's motion to dismiss and/or for summary judgment seeking dismissal of defendant The Church of Jesus Christ of Latter-day Saints ("the Church"). The Court heard argument of counsel on the original motion on Friday, February 9, 2007, and has considered the following submissions:

ORDER - 1

Page 311

COPY

GORDON MURRAY TILDEN LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

1. COP's memo in support;
2. Declaration of Michael Rosenberger and attached exhibits;
3. Declaration of Paul Rytting;
4. Plaintiff's Opposition Brief;
5. Declaration of Michelle A. Menely and attached exhibits;
6. COP's Reply Brief;
7. Second Declaration of Paul D. Rytting
8. COP's Motion for Reconsideration
9. _____

Based upon the foregoing, it is hereby:

ORDERED that COP's motion for reconsideration is GRANTED. The Court hereby vacates its order of February 9, 2007, and dismisses the Church from this action with prejudice.

DATED this _____ day of _____, 2007.

The Honorable Laura C. Inveen

Presented by:

GORDON MURRAY TILDEN LLP

By _____

Charles C. Gordon, WSBA #1773

Jeffrey I. Tilden, WSBA #12219

Michael Rosenberger, WSBA #17730

Attorneys for Defendant

ORDER - 2

FILED
07 FEB 20 PM 3:33
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

**SUPERIOR COURT, IN AND FOR THE COUNTY OF KING, STATE OF
WASHINGTON**

D.F.

Plaintiff/Petitioner

Cause #: 06-2-18131-0
KNT

vs.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, A UTAH CORPORATION
SOLE; ET AL.,

Defendant/Respondent

Declaration of Service of:

SUBPOENA DUCES TECUM TO KENT SCHOOL DISTRICT,
12033 S.E. 256TH STREET, KENT, WA 98030-6643;
WITNESS FEE CHECK

Hearing Date: Mar 5 2007

Declaration:

The undersigned hereby declares: That s(he) is now and at all times herein mentioned, a citizen of the United States and a resident of the State of Washington, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the date and time of Feb 15 2007 1:18PM at the address of 12033 SE 256TH ST KENT, within the County of KING, State of WASHINGTON, the declarant duly served the above described documents upon KENT SCHOOL DISTRICT, RECORDS CUSTODIAN by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with BARBARA GROHE, SUPERINTENDENT.

No information was provided that indicates that the subjects served are members of the U.S. military.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: February 16, 2007 at Seattle, WA

by Charles Reeves
C. Reeves

Service Fee Total: \$ 65.85



FILED
KING COUNTY, WASHINGTON

MAR 27 2007

SUPERIOR COURT CLERK
KIM C. PHIPPS
DEPUTY

The Honorable Laura C. Inveen

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

~~PROPOSED~~

ORDER GRANTING COP'S MOTION
FOR RECONSIDERATION AND
~~DISMISSING THE MORMON~~
CHURCH AND SETTING
BRIEFING SCHEDULE

THIS MATTER was brought before the Court upon the motion of defendant Corporation of the President of the Church of Jesus Christ of Latter-Day Saints ("COP") for reconsideration of this Court's order denying COP's motion to dismiss and/or for summary judgment seeking dismissal of defendant The Church of Jesus Christ of Latter-day Saints ("the Church"). The Court heard argument of counsel on the original motion on Friday, February 9, 2007, and has considered the following submissions:

ORDER - 1

ORIGINAL

1. COP's memo in support;
2. Declaration of Michael Rosenberger and attached exhibits;
3. Declaration of Paul Rytting;
4. Plaintiff's Opposition Brief;
5. Declaration of Michelle A. Menely and attached exhibits;
6. COP's Reply Brief;
7. Second Declaration of Paul D. Rytting
8. COP's Motion for Reconsideration
9. _____

Based upon the foregoing, it is hereby:

Response to COP's

ORDERED that COP's motion for reconsideration is GRANTED. The Court hereby ~~motion shall be due by April 9, 2007. Reply shall be heard due by vacates its order of February 9, 2007, and dismisses the Church from this action with prejudice.~~ April 13, 2007. Matter shall be heard without oral argument on or after

DATED this 23 day of March, 2007. April 16, 2007



The Honorable Laura C. Inveen

Presented by:

GORDON MURRAY TILDEN LLP

By 

Charles C. Gordon, WSBA #1773

Jeffrey I. Tilden, WSBA #12219

Michael Rosenberger, WSBA #17730

Attorneys for Defendant

ORDER - 2

FILED
07 APR -9 PM 4:48
KING COUNTY
COURT CLERK
KENT, WA

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT OF
THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah Corporation
sole; and the "MORMON CHURCH" THE
CHURCH OF JESUS CHRIST OF LATTER-
DAY SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

PLAINTIFF'S MEMORANDUM IN
OPPOSITION to DEFENDANT COP'S
MOTION FOR RECONSIDERATION

THE HONORABLE LAURA INVEEN

I. INTRODUCTION

On February 9, 2007 this Court properly ruled that there was a question of fact precluding the dismissal of defendant "the Mormon Church." COP now seeks reconsideration asserting that the factual basis upon which plaintiff successfully defended the summary judgment are insufficient. For the reasons stated below, this Court should deny COP's Motion for Reconsideration.

II. ARGUMENT

In seeking reconsideration (and reversal of this Court's prior determination), COP submits nothing more than its own subjective determination of factual issues. However, as this Court is well-aware, on a motion for summary judgment, the moving party's

PLTF. OPP. TO DEF. MTN FOR RECONSIDERATION- 1
06-2-18131-0 KNT
[177719 v04.doc]

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
ONE UNION SQUARE
600 UNIVERSITY, SUITE 2100
SEATTLE, WASHINGTON 98101-4185
(206) 676-7500 • FACSIMILE (206) 676-7575

1 interpretation of “facts” is not controlling. Instead, all facts, **and reasonable inferences**
 2 **therefrom**, must be taken in the light most favorable to the non-moving party – in this case,
 3 plaintiff Dan Fleming. *KMS Fin. Servs., Inc. vs. Seattle*, 135 Wn.App. 489, 495-496, 156
 4 P.3d 1195 (2006).

5 **A. PLAINTIFF HAS PROVIDED FACTUAL EVIDENCE THAT THE CHURCH HOLDS ITSELF**
 6 **OUT AS “DOING BUSINESS.”**

7 There is no real dispute that the case law cited by plaintiff in the original opposition
 8 demonstrates that the Church itself has been named as a party plaintiff and/or party defendant
 9 on multiple occasions. In apparent recognition of its inability to factually distinguish the prior
 10 case law, defendant asserts that the case law from other jurisdictions demonstrate nothing
 11 more than COP was the “real-party-in-interest” in prior cases and that the plaintiffs in the
 12 prior cases simply named the wrong party. However, in doing so, COP does not explain why
 13 the Church itself actually instituted suit as a party plaintiff. If, indeed, the cases were merely
 14 reflective of COP being the real party in interest, one would imagine that COP – as the party
 15 instituting an action – would name the proper party. By holding itself out as an entity capable
 16 of instituting suit, should estop the Church from now arguing that it is incapable of being
 17 sued.

18 In an effort to circumvent the inconsistent positions, COP argues that simply because
 19 the Church actually “does business” in other states does not mean that it “does business” in
 20 this state asserting that the Church itself conducts no business, holds no property, and conduct
 21 “no business.” The Church’s argument is a red-herring and is an attempt to replace its
 22 determination of what “doing business” entails over that of the plaintiff and, ultimately, the
 23 jury. Indeed, Plaintiff provided factual evidence from which this Court (or, ultimately, a jury)
 24 could determine that COP is indeed “doing business” in Washington. That evidence¹

25 _____
 26 ¹ Listed on pgs. 9 and 10 of plaintiff’s opposition to defendant’s motion to dismiss.

1 included information demonstrating that the Church has "availed itself," of the benefits of this
 2 state and, therefore, "does business" within the state. Included among the information
 3 provided was the fact that the Church (a) recruits members here, (b) collects "tithing" here
 4 (which "tithing" can include "marketable real estate"), and (c) the fact that the Church has
 5 checking accounts within the state.

6 In disputing these facts, COP asserts that while money is collected from Washington
 7 residents, and deposited into Washington bank accounts, the money is actually owned by the
 8 Corporation of the Presiding Bishop of the Church; however, while this assertion may be true,
 9 COP provides nothing to support this assertion, e.g., the bank account records demonstrating
 10 that the "owner" is the Presiding Bishop, as opposed to the local Ward. Again, all facts must
 11 be taken in the light most favorable to Dan Fleming. Plaintiff has provided factual evidence
 12 demonstrating that the Church holds itself out as "doing business" within this State. In the
 13 absence of actual proof defeating plaintiff's allegation, COP's motion must be denied.

14 Finally, with regard to missionary work and/or tithing, plaintiff is not asking this
 15 Court to interpret or weigh church doctrine. Instead, plaintiff simply demonstrates that these
 16 "events" occur within this State and that by engaging in such actions, the Church, itself, is
 17 "doing business" within this State.

18 **B. THIS IS NOT A LEGAL ISSUE WHICH THE COURT MUST RESOLVE.**

19 Defendant correctly argues that **whether** jurisdiction has been obtained is a legal
 20 question for the Court to resolve. However, there is no question as to whether plaintiff
 21 obtained physical service of process – he did.² Consequently, the issue is limited to whether
 22 service on "any agent" is sufficient. *See*, RCW 4.28.080(10) ("if the suit be against
 23 a . . . association doing business within this state, to **any** agent. . ."). Consequently, the issue
 24

25
 26 ² As even defendant noted, plaintiff physically served Gordon Conger with the Summons and Complaint.

1 is not a jurisdictional one but is, instead, a factual one – does the Church “do business” within
 2 this State. If so, service on **any** agent is sufficient.³

3 C. JUDGE DOWNING’S RULING.

4 COP implies that because Judge Downing ruled that the Mormon Church should be
 5 dismissed, that this Court should rule accordingly. Plaintiff believes that Judge Downing’s
 6 ruling was erroneous and this Court should not follow that error. However, in the event this
 7 Court does, indeed, reverse itself, plaintiff respectfully requests that this Court take note of
 8 Judge Downing’s concerns relating to the dismissal, as demonstrated by the conditions he
 9 imposed on COP in granting the motion to dismiss.⁴ Plaintiff requests that if this Court
 10 determines that the “Mormon Church” should be dismissed that similar conditions be
 11 imposed, namely:

- 12 1. Any person who would otherwise be an agent of the Church is an agent of
 13 COP;
- 14 2. The Court will be liberal in considering statements and admissions by agents
 15 of the Church as statements and admissions against COP;
- 16 3. Any agent of the Church is an agent of COP for both liability and evidentiary
 17 purposes; and
- 18 4. The Mormon Church will not be an “empty chair” entity in this case.

19 III. CONCLUSION

20 For the above stated reasons, plaintiff respectfully requests that this Court DENY
 21 COP’s Motion for Reconsideration.

22
 23
 24
 25 ³ COP has not disputed this point but, instead, asserts that the Church does not “do business” and thus, that
 service on **all** members is required.

26 ⁴ See Order Granting Defendant’s Motion to Dismiss and/or for Summary Judgment, pg. 2, ll. 37 – pg. 3, 5,
 attached to COP’s Motion for Reconsideration.

1 RESPECTFULLY SUBMITTED this 9th day of April 2007.

2
3 GORDON, THOMAS, HONEYWELL,
MALANCA, PETERSON & DAHEIM LLP

4
5 By Michelle Menely
6 Michael T. Pfau, WSBA No. 24649
7 mpfau@gth-law.com
Michelle A. Menely, WSBA No. 28353
8 mmenely@gth-law.com
Co-Counsel for Plaintiff

9 LAW OFFICES OF TIMOTHY D. KOSNOFF

10 By Timothy D. Kosnoff 28353
11 for Timothy D. Kosnoff, WSBA No. 16586
12 timkosnoff@comcast.net
Co-Counsel for Plaintiff

13
14
15
16
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18
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21
22
23
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25
26
PLTF. OPP. TO DEF. MTN FOR RECONSIDERATION- 5
06-2-18131-0 KNT
[177719 v04.doc]

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 9 day of April, 2007, I did serve true and correct copies of the foregoing via facsimile and via ABC Legal Messengers by directing delivery to and addressed to the following:

Counsel for COP.:

Charles Gordon, Esq.
Jeffrey Tilden, Esq.
Michael Rosenberger, Esq.
GORDON MURRAY TILDEN
1001 Fourth Avenue, Suite 4000
Seattle, WA 98101
TEL: 206.467.6477
FAX: 206.467.6292


Fara Fusaro
Legal Assistant to Michelle A. Menely

PLTF. OPP. TO DEF. MTN FOR RECONSIDERATION- 6
06-2-18131-0 KNT
[177719 v4.doc]

ORIGINAL COURT MINUTES

** PREPARED **
04-03-07 12:21

KENT REGIONAL JUSTICE CENTER
SHOW CAUSE COMPLIANCE HEARING - KENT
TUESDAY, APRIL 10, 2007
JUDGE PALMER ROBINSON
90 DAYS PRIOR DATE JANUARY 10, 2007

PAGE 28

NOT REPORTED

1FRL0706

COURT CLERK: Renee Jones

28.

F, D

06-2-18131-0 KNT

VS CORPORATION OF THE PRESIDENT OF
THE CHURCH OF JESUS CHRIST OF
ET AL
GORDON, CHARLES COOPER
TILDEN, JEFFREY IVER
ROSENBERGER, MICHAEL

PFAU, MICHAEL THOMAS
MENELY, MICHELLE
KOSNOFF, TIMOTHY DAVID

1:30/1F/ORDER TO SHOW CAUSE

- ☐ The case is NOT on track, but will be monitored by the assigned Judge.
- ☐ Case is on track; parties to follow civil case schedule.
- ☒ Status conference continued to 5/22/07 unless before
5/15/07 a Confirmation of Joinder, a Statement of Arbitrability or a
dismissal of all claims and parties is filed.
- ☐ This case is transferred to Family Court Services for purposes of mediation
and investigation.
- ☐ Case transferred to Mandatory Arbitration; Statement of Arbitrability to be
filed by _____.
- ☐ Case is dismissed without prejudice.
- ☐ Sanctions / Terms in the amount of \$ _____ shall be paid by _____
to the King County Clerk, no later than _____.
- ☒ Order is signed.
- ☐ Stricken, no appearances.

SCOMIS CODE: ☒ STAHRG

☐ STKNA

FILED
KING COUNTY, WASHINGTON

APR 10 2007

SUPERIOR COURT CLERK
GENEE JAMES
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

F
Plaintiff / Petitioner
vs.
CORP OF THE PRESIDENT OF THE CHURCH OF
Defendant / Respondent

NO. 06-2-18131-0 KNT

ORDER ON SHOW CAUSE HEARING
(Clerk's Action Required)

SCOMIS Code: ORSTAC/ORDSM/ORCNT

ORIGINAL

I. The Court finds upon initial review that:

- 1.1 The parties were not in compliance with the Case Schedule. The Court further finds:
1.2 ☒ The parties appeared for the hearing.
1.3 ☐ The parties/_____ failed to appear for the hearing.
1.4 ☐ A Confirmation of Service, showing service on all named parties, has not been filed.
1.5 ☐ The case appears to be subject to mandatory arbitration, but is not yet at issue.
1.6 ☐ Mandatory pleadings having not been filed, the _____ has not moved for default.
1.7 ☐ _____

II. It is hereby ordered:

- 2.1 ☐ This action / _____ is **dismissed** without prejudice.
2.2 ☐ The case is **on track** because it is in substantial compliance with the Case Schedule.
2.3 ☐ The case is fully at issue and subject to **mandatory arbitration**. The Court hereby transfers this case to mandatory arbitration, and a Statement of Arbitrability shall be filed by _____ with payment of \$220.
2.4 ☐ The Court further requires that:

2.5 ☐ **Sanctions / Terms** in the amount of \$ _____ shall be paid by _____ to the King County Clerk / _____ no later than _____ for failure to appear as ordered / comply with court rules / _____.
2.6 ☒ This matter is continued until 5/22/07. Hearing will be stricken if confirmation of process filed by 5/15.
2.7 **FAILURE TO COMPLY WITH ANY TERMS OF THIS ORDER MAY RESULT IN DISMISSAL OR FURTHER SANCTIONS.**

DATED: 4/10/07

Palmer Robinson
Superior Court Judge Palmer Robinson

GORDON, CHARLES COOPER
1001 4TH AVE STE 4000
SEATTLE, WA 98154-1007

KOSNOFF, TIMOTHY DAVID
600 UNIVERSITY ST STE 2100
SEATTLE, WA 98101-4161

MENELY, MICHELLE
600 UNIVERSITY ST STE 2100
SEATTLE, WA 98101-4185

PFAU, MICHAEL THOMAS
600 UNIVERSITY ST STE 2100
SEATTLE, WA 98101-4185

ROSENBERGER, MICHAEL
1001 4TH AVE STE 4000
SEATTLE, WA 98154-1007

TILDEN, JEFFREY IVER
1001 4TH AVE STE 4000
SEATTLE, WA 98154-1007

FILED

The Honorable Laura C. Inveen

07 APR 13 PM 1:25
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

DEFENDANT COP'S REPLY IN
SUPPORT OF MOTION FOR
RECONSIDERATION

I. INTRODUCTION

Plaintiff's opposition to the motion for reconsideration fails to identify any evidence that shows that the LDS Church is "doing business" in the State of Washington. Because there is a complete failure of proof on this issue, plaintiff could not serve the Church by utilizing the statute allowing service on an agent of an association "doing business" in the State of Washington. Service upon an agent of the Church is not service upon the Church. Thus, with

DEFENDANT COP'S REPLY IN SUPPORT OF MOTION FOR
RECONSIDERATION - 1

GORDON MURRAY TILDEN LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

ORIGINAL

1 service improper and no practical means by which to accomplish service, COP's motion to
 2 dismiss the Church should thus be granted.
 3

4 5 **II. ARGUMENT**

6 7 **A. Cases in Which the Church Was a Party Are Irrelevant**

8
9 Plaintiff does not, and cannot, dispute that cases from other jurisdictions in which the
 10 Church was a named party say nothing about whether the Church currently does business in *this*
 11 state. Thus, for the purpose of resolving the issue of whether the Church is "doing business" in
 12 Washington, such cases are irrelevant.
 13
 14

15
16 Plaintiff argues that having brought suit in other jurisdictions, the Church should be
 17 estopped "from now arguing that it is incapable of being sued." Plaintiff's Opp. at 2:16-17. This
 18 argument misses the point of the motion. COP's motion for reconsideration does not argue the
 19 Church lacks capacity to be sued. COP's original motion to dismiss did argue that when a
 20 religious organization incorporates, the unincorporated church lacks capacity to sue or be sued.
 21 This Court rejected that argument, and while COP respectfully disagrees, it does not re-argue it
 22 here. This motion for reconsideration is focused solely on whether the Church is "doing
 23 business" for purposes of service of process.
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32 33 **B. Plaintiff Presents No Evidence the Church is Doing Business in Washington**

34
35 Plaintiff repeats his familiar arguments that the Church is doing business in Washington,
 36 but cites no facts from the record to support any such contention. Plaintiff's position is based
 37 upon three things: (a) the Church's missionary work; (b) the Church's collection of donations or
 38 tithing; and (c) the allegation that "the Church" has checking accounts within the State. The
 39 former two are spiritual, not commercial practices, and the third is unsupported by any evidence.
 40
 41
 42
 43
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 45

1 Tithing and Missionary Work. The only evidence in the record that speaks to the role of
 2 missionary work and tithing within the Church is provided in the previously-filed Second
 3 Declaration of Paul D. Rytting. Mr. Rytting states, "Missionary work is a deep spiritual
 4 obligation of every member of the church." *Id.* ¶ 4. Similarly, Mr. Rytting states that, "Payment
 5 of tithing is a spiritual obligation and . . . is considered a privilege of membership with associated
 6 blessings." *Id.* ¶ 5. There is no contrary evidence.

7 The Church's doctrine that missionary work and tithing are spiritual practices, not
 8 commercial practices, is dispositive. Courts cannot "engage in the forbidden process of
 9 interpreting and weighing church doctrine." *Presbyterian Church v. Mary Elizabeth Hull*
 10 *Memorial Presbyterian Church*, 393 U.S. 440, 451 (1969).

11 Plaintiff contends he is not asking the Court to "weigh church doctrine," but rather, that
 12 these "events" occur in Washington and constitute "doing business" within the state. Plaintiff's
 13 Opp. at 3:16-17. However, one cannot characterize these as "business" practices unless one
 14 rejects the Church's belief that these are spiritual practices. The First Amendment precludes
 15 courts from doing so. Moreover, even if the Court could do so, donating to one's church and
 16 proselytizing to gain new members into the church are patently religious, not commercial,
 17 practices.

18 The Church Has No Checking Accounts. Plaintiff contends that COP provides "nothing"
 19 in support of COP's assertion that all accounts used by local wards are in fact owned and
 20 controlled by church corporations. Plaintiff's Opp. at 3: 9. This is untrue, and it ignores the
 21 Second Declaration of Mr. Rytting. Mr. Rytting states:

22 The checking (disbursement) account used by domestic local
 23 wards and stakes is owned by the Corporation of the Presiding

Bishop of the Church of Jesus Christ of Latter Day Saints ("CPB").
Funds in this account are provided by COP from contributed
revenue, including tithing.

Second Rytting Declaration ¶ 8 (emphasis added).

This checking account is used to provide for the needs of the less fortunate within the
community. *Id.* ¶ 11. It is not used to perform any commercial transactions. The local ward
account is not used for any purchases or payments of a commercial nature. *Id.* ¶ 13.

In sum, there is simply no evidence that the Church does business within the State of
Washington.

**C. Whether the Church Is Doing Business Is a Jurisdictional Issue That Must Be
Resolved as a Matter of Law**

Plaintiff does not cite any authority to contradict the case law cited in the Motion for
Reconsideration. Plaintiff merely repeats the conclusory statement that whether the Church does
business is a factual question. Plaintiff is incorrect.

Here, the Court does not have jurisdiction over the Church unless service is proper.
Service is only proper if the Church is doing business in the State of Washington. While plaintiff
may characterize the effectiveness of service as a "factual question," it does not alter the fact that
it is the duty of the Court to resolve this issue, upon which jurisdiction hinges. In this regard, the
issue is no different than a dispute as to whether a foreign corporation has sufficient "minimum
contacts" with the state such that a court can exercise personal jurisdiction over the defendant.
Whether such minimum contacts exist may be a hotly contested factual question, but it is still the
duty of the court, and not the jury, to resolve the dispute. *MBM Fisheries, Inc. v. Bollinger
Mach. Shop & Shipyard, Inc.*, 60 Wn. App. 414, 418, 804 P.2d 627 (1991) ("personal
jurisdiction is a question of law").

D. Judge Downing's Order Dismissing the Church is Appropriate and Acceptable.

Since the date COP filed its motion for reconsideration, Judge Downing approved the form of order previously submitted to this Court. Plaintiff requests that if this Court dismisses the Church, that this Court also impose the same conditions as are contained in Judge Downing's order. COP has no objection to the Court doing so, as these conditions simply implement the position taken by COP from the outset: that plaintiff would suffer no prejudice from dismissal of the Church in this action.

III. CONCLUSION

The record before this Court shows, without contravention, that the Church's presence in this state is one that has no commercial attributes. It has no bank accounts, it has no employees, it hires no contractors, and it pays no bills. It is not doing business within the state within the meaning of the service of process statute, RCW 4.28.080(10). Plaintiff has failed to serve the Church, and cannot practically do so. COP respectfully requests that this Court grant the motion and dismiss the Church from this action.

DATED this 13 day of April, 2007.

GORDON MURRAY TILDEN LLP

By Michael Rosenberger
 Charles C. Gordon, WSBA #1773
 Jeffrey I. Tilden, WSBA #12219
 Michael Rosenberger, WSBA #31550
 Attorneys for Defendants
 Corporation of the President of the Church
 of Jesus Christ of Latter-Day Saints

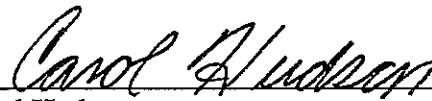
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 13, 2007, copies of the foregoing Defendant COP's Reply in Support of Motion for Reconsideration were served at the following addresses via hand delivery by ABC Legal Services, Inc.:

Michael T. Pfau
Michelle A. Menely
Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP
600 University, Suite 2100
Seattle, WA 98101-4185
Co-Counsel for Plaintiff Rob Rinde

Timothy D. Kosnoff
Law Offices of Timothy D. Kosnoff
One Union Square
600 University Street, Suite 2101
Seattle, WA 98101
Co-Counsel for Plaintiff Rob R inde

DATED this 13th day of April, 2007.



Carol Hudson

FILED

07 MAY -8 PM 4:43

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

The Honorable Laura C. Inveen

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

NOTICE OF WITHDRAWAL AND
SUBSTITUTION OF COUNSEL

(Clerk's Action Requested)

DEFENDANTS' NOTICE OF SUBSTITUTION OF COUNSEL

TO: The Clerk of the Court; and

TO: The Plaintiff and their Counsel of Record

PLEASE TAKE NOTICE that, effective May 1, 2007, the law firm of GORDON
MURRAY TILDEN LLP has changed its name to GORDON TILDEN THOMAS & CORDELL
LLP. Accordingly, GORDON TILDEN THOMAS & CORDELL LLP hereby substitutes for
GORDON MURRAY TILDEN LLP as counsel for defendants, THE CORPORATION OF THE

NOTICE OF WITHDRAWAL AND SUBSTITUTION OF
COUNSEL - 1

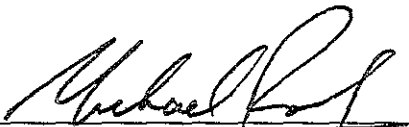
ORIGINAL

GORDON TILDEN THOMAS & CORDELL LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, LDS
SOCIAL SERVICES A/K/A LDS FAMILY SERVICES, and THE "MORMON CHURCH"
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS. Except as to the foregoing,
there is no change in the address or in the attorneys assigned to handle the matter.

DATED this 7 day of May, 2007.

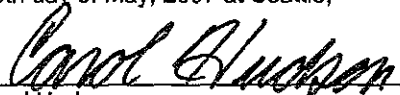
GORDON TILDEN THOMAS & CORDELL LLP

By 
Charles C. Gordon, WSBA #1773
Jeffrey I. Tilden, WSBA #12219
Michael Rosenberger, WSBA #17730
Attorneys for Defendants

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, I caused a true and correct copy of this document to be delivered via U.S. first class mail to: MICHAEL T. PFAU and TIMOTHY D. KOSNOFF, counsel for plaintiff, at the regular office address thereof.

Dated this 8th day of May, 2007 at Seattle, Washington.


Carol Hudson
of Gordon Tilden Thomas & Cordell LLP

FILED
KING COUNTY WASHINGTON

MAY 22 2007
SUPERIOR COURT CLERK
RAMONA HALLING
DEPUTY

The Honorable Laura C. Inveen

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; LDS SOCIAL SERVICES a/k/a LDS
FAMILY SERVICES, a Utah corporation; and
the "MORMON CHURCH" THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

~~[PROPOSED]~~
ORDER GRANTING COP'S MOTION
FOR RECONSIDERATION AND
DISMISSING THE MORMON
CHURCH

THIS MATTER was brought before the Court upon the motion of defendant Corporation of the President of the Church of Jesus Christ of Latter-Day Saints ("COP") for reconsideration of this Court's order denying COP's motion to dismiss and/or for summary judgment seeking dismissal of defendant The Church of Jesus Christ of Latter-day Saints ("the Church"). The Court heard argument of counsel on the original motion on Friday, February 9, 2007, and has considered the following submissions:

ORDER - 1

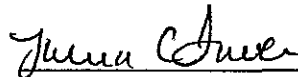
ORIGINAL

1. COP's memo in support;
2. Declaration of Michael Rosenberger and attached exhibits;
3. Declaration of Paul Rytting;
4. Plaintiff's Opposition Brief;
5. Declaration of Michelle A. Menely and attached exhibits;
6. COP's Reply Brief;
7. Second Declaration of Paul D. Rytting
8. COP's Motion for Reconsideration
9. Plaintiff's Memorandum in Opposition to COP's Motion for Reconsideration
10. Defendant COP's Reply in Support of Motion for Reconsideration

Based upon the foregoing, it is hereby:

ORDERED that COP's motion for reconsideration is GRANTED. The Court hereby vacates its order of February 9, 2007, and dismisses the Church from this action with prejudice,*

DATED this 22 day of May, 2007.



The Honorable Laura C. Inveen

Presented by:

GORDON MURRAY TILDEN LLP

By 

Charles C. Gordon, WSBA #1773

Jeffrey I. Tilden, WSBA #12219

Michael Rosenberger, WSBA #17730

Attorneys for Defendant

*pursuant to conditions 1-4 as set out in Judge Dawson's Order Granting Defendant's Motion to Dismiss in 06-2-09825-1 entered 2/13/07, attached hereto, and to which Defendants indicate no objection.

ORDER - 2

ORIGINAL COURT MINUTES

** PREPARED **
05-15-07 09:46

KENT REGIONAL JUSTICE CENTER
SHOW CAUSE COMPLIANCE HEARING - KENT
TUESDAY, MAY 22, 2007
JUDGE PALMER ROBINSON
90 DAYS PRIOR DATE FEBRUARY 21, 2007

PAGE 3

COURT CLERK:

RENEE JAMES

NOT REPORTED

3.

F, D

06-2-18131-0 KNT

VS CORPORATION OF THE PRESIDENT OF
THE CHURCH OF JESUS CHRIST OF
ET AL
GORDON, CHARLES COOPER
TILDEN, JEFFREY IVER
ROSENBERGER, MICHAEL

PFAU, MICHAEL THOMAS
MENELY, MICHELLE
KOSNOFF, TIMOTHY DAVID
Fasy, Daniel Appearing
ORDER OF CONTINUANCE /SHOW CAUSE

____ The case is NOT on track, but will be monitored by the assigned Judge.

☒ Case is on track; parties to follow civil case schedule.

____ Status conference continued to _____ unless before
_____ a Confirmation of Joinder, a Statement of Arbitrability or a
a dismissal of all claims and parties is filed.

____ This case is transferred to Family Court Services for purposes of mediation
and investigation.

____ Case transferred to Mandatory Arbitration; Statement of Arbitrability to be
filed by _____.

____ Case is dismissed without prejudice.

____ Sanctions / Terms in the amount of \$ _____ shall be paid by _____
to the King County Clerk, no later than _____.

☒ Order is signed.

____ Stricken, no appearances.

SCOMIS CODE: ☒ STAHRG ☐ STKNA

FILED
KING COUNTY, WASHINGTON

MAY 22 2007

SUPERIOR COURT CLERK
RENEE JAMES
DEPUTYIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

F

Plaintiff / Petitioner

vs.

CORP OF THE PRESIDENT OF THE CHURCH OF
Defendant / Respondent

NO. 06-2-18131-0 KNT

ORDER ON SHOW CAUSE HEARING
(Clerk's Action Required)

SCOMIS Code: ORSTAC/ORDSM/ORCNT

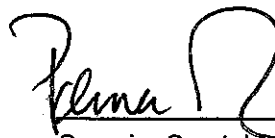
I. The Court finds upon initial review that:

- 1.1 The parties were not in compliance with the Case Schedule. The Court further finds:
- 1.2 ☒ The parties appeared for the hearing.
- 1.3 ☐ The parties/_____ failed to appear for the hearing.
- 1.4 ☐ A Confirmation of Service, showing service on all named parties, has not been filed.
- 1.5 ☐ The case appears to be subject to mandatory arbitration, but is not yet at issue.
- 1.6 ☐ Mandatory pleadings having not been filed, the _____ has not moved for default.
- 1.7 ☐ _____

II. It is hereby ordered:

- 2.1 ☐ This action / _____ is **dismissed** without prejudice.
- 2.2 ☒ The case is **on track** because it is in substantial compliance with the Case Schedule.
- 2.3 ☐ The case is fully at issue and subject to **mandatory arbitration**. The Court hereby transfers this case to mandatory arbitration, and a Statement of Arbitrability shall be filed by _____ with payment of \$220.
- 2.4 ☐ The Court further requires that:

- 2.5 ☐ **Sanctions / Terms** in the amount of \$ _____ shall be paid by _____ to the King County Clerk / _____ no later than _____ for failure to appear as ordered / comply with court rules / _____.
- 2.6 ☐ This matter is continued until _____. Hearing will be stricken if _____.
- 2.7 **FAILURE TO COMPLY WITH ANY TERMS OF THIS ORDER MAY RESULT IN DISMISSAL OR FURTHER SANCTIONS.**

DATED: May 22, 2007

Superior Court Judge Palmer Robinson

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1001 4TH AVE STE 4000
SEATTLE, WA 98154-1007

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TILDEN, JEFFREY IVER
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